IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs. No. 15 CR 1287 MV-1

DEANDRE LAMONT BROWN,

Defendant.

OBJECTIONS TO PRE-SENTENCE REPORT

Deandre Lamont Brown, through his undersigned attorney, files the following objection to the Presentence Report (PSR).

A. Mr. Brown Objects to the two level enhancement for physical restraint as per United States Sentencing Guideline §3A1.3.

Mr. Brown pled guilty to **"**Assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate…" 18 U.S.C.A. § 113 (West) United States Probation Officer Loyola Garcia found that a two (2) level increase was appropriate for physical restraint under 3A1.3 which states that "If a victim was physically restrained in the course of the offense, increase by 2 levels" as defined in Application Note 1 and 1B1.1 " explains that this increase is not appropriate where "…the unlawful restraint of a victim is an element of the offenses." Physical Restraint is defined in 1B1.1 Application Note 1(K) as "…the forcible restraint of the victim such as by being tied, bound, or locked up."

Mr. Brown is not accused of tying, binding or locking up A.M. The presentence report defines his actions as "…pushing her down on the bed and choking her." PSR ¶16. He asks that the court find that this action of "pushing" is an element of the crime. The act of strangulation and the alleged act of physical restraint is one action and for that reason Mr. Brown asks the court find that this enhancement does not apply.

B. Mr. Brown objects to the three (3) level enhancement requested by the Government, per United States Sentencing Guideline §2A2.2(4).

Mr. Brown, through his defense counsel agrees with United States Probation that the three level enhancement for "…strangling, suffocating or attempting to strangle or suffocate…" does not apply as per United States Sentencing Guideline 1B1.11 Application Note 2 which states that "Subsection (a) and (b)(1) provide that the court should apply the Guidelines Manual in effect on the date of the defendant is sentenced unless the court determines that doing so would violate the ex post facto clause in Article I, §9 of the United States Constitution." USSG §1B1.11 App. Note 2, which further states "No Bill of Attainder or ex post facto Law shall be passed." U.S. Const. art. I, § 9, cl. 3

The Date of Offense was October 3, 2014. The Violence Against Women Reauthorization Act took effect on November 1, 2014. Because the Date of Offense occurred before, the effective date of the Violence Against Women Reauthorization Act, the appropriate guideline application should be the 2013 United States Sentencing Guidelines. This will prevent a retroactive effect in this case.

Conclusion

The presentence report calculated Mr. Brown's offense level as 17. Mr. Brown asks that the court find that the 2 level enhancement for "physical restraint" does not apply. Further he requests that the court find that the 3 level enhancement requested by the Government for Strangulation also should not apply. This results in an offense level of 15. This offense level and a Criminal History category of I, results in a guideline range of 18 to 24 months. This offense level is near the sentence of twelve months and one day Mr. Brown respectfully requested in his Sentencing Memorandum.

I HEREBY CERTIFY THAT on the 14th Day of November 2016, I filed the foregoing electronically through the CM/ECF system, which caused AUSA Novaline Wilson to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

filed electronically

Respectfully submitted,

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/s/ *filed electronically* .
IRMA RIVAS, AFPD
Attorney for Defendant